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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RAUL ARELLANO, JR.,

12 Plaintiff,

13 v.

14 OFFICER HODGE, et al.,

15 Defendants.
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Case No.: 14-CV-590 JLS (JLB)

**ORDER DENYING IN PART AND
GRANTING IN PART PLAINTIFF'S
MOTION TO APPOINT COUNSEL
AND TO EXTEND TIME TO
RESPOND**

(ECF No. 211)

18 Presently before the Court is Plaintiff Raul Arellano, Jr.'s Motion to Appoint
19 Counsel and for Extension of Time to Object to R&R. ("MTN," ECF No. 211.) On July
20 30, 2018, Magistrate Judge Jill Burkhardt issued a Report and Recommendation on
21 Defendants' Motion for Summary Judgment. ("R&R," ECF No. 209.) In his motion,
22 Plaintiff requests the Court appoint him counsel and requests an extension of time to
23 respond to the R&R.

24 **I. Motion to Appoint Counsel**

25 There is no constitutional right to counsel in a civil case. *Lassiter v. Dep't of Social*
26 *Servs. of Durham Cnty.*, 452 U.S. 18, 25 (1981). While under 28 U.S.C. § 1915(e)(1),
27 district courts have some limited discretion to "request" that an attorney represent an
28 indigent civil litigant, *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004),

1 *cert. denied sub nom. Gerber v. Agyeman*, 545 U.S. 1128 (2005), this discretion is rarely
2 exercised and only under “exceptional circumstances.” *Id.*; *see also Terrell v. Brewer*, 935
3 F.2d 1015, 1017 (9th Cir. 1991). A finding of exceptional circumstances requires “an
4 evaluation of the likelihood of the plaintiff’s success on the merits and an evaluation of the
5 plaintiff’s ability to articulate his claims ‘in light of the complexity of the legal issues
6 involved.’” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,
7 1331 (9th Cir. 1986)). “Neither of these considerations is dispositive and instead must be
8 viewed together.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (citing *Wilborn*,
9 789 F.2d at 1331).

10 Plaintiff states that he is suffering from blindness and that the accommodations
11 provided to him by the prison are insufficient. (MTN 1–2.) He further states that he has
12 been receiving help from inmates in writing his motions, but the inmates cannot help him
13 with substantive legal issues and research. (*Id.* at 2.) Judge Burkhardt recently discussed
14 in depth the procedural history concerning Plaintiff’s blindness issues, (ECF No. 208), and
15 the Court incorporates those facts by reference. As relevant here, Judge Burkhardt
16 requested Defendants’ file a status report with the Court, to which Defendants filed a status
17 report and a supplemental status report. Both reports indicate that treating physicians have
18 been unable to verify whether Plaintiff is actually having vision issues. (*See* ECF Nos.
19 199, 202.) However, the prison has granted Plaintiff various vision-related
20 accommodations.

21 Plaintiff’s claims have survived the motion to dismiss stage, but have not progressed
22 beyond the motion for summary judgment stage. Thus, the veracity of Plaintiff’s claims
23 have not been tested. Thus, the Court finds Plaintiff has not yet demonstrated a likelihood
24 of success on the merits.

25 Next, Plaintiff has not demonstrated an inability to articulate his claims in light of
26 the complexity of his legal issues. First, the Court does not have any independent, medical
27 verification of Plaintiff’s blindness. In May 2018, Defendants submitted two status reports
28 indicating that Plaintiff’s treating ophthalmologist has evaluated Plaintiff and has not found

1 a medical reason for Plaintiff's claimed vision problem. (*See* ECF No. 199, at 2; *see also*
2 ECF No. 202, at 2.) Second, Plaintiff has been able to file motions, with the assistance of
3 other prisoners, and has included citations to cases in his motions. Third, his claims are
4 not particularly complex. In sum, the Court finds Plaintiff has not met the inability to
5 articulate his claims requirement.¹ *See Jones v. Kuppinger*, No. 2:13-CV-0451 WBS AC,
6 2015 WL 5522290, at *3 (E.D. Cal. Sept. 17, 2015) ("Circumstances common to most
7 prisoners, such as a deficient general education, lack of knowledge of the law, mental
8 illness and disability, do not in themselves establish exceptional circumstances warranting
9 appointment of voluntary civil counsel.").

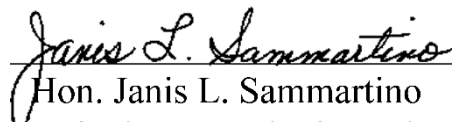
10 The Court is mindful of Plaintiff's claimed medical issues. It will continue to
11 monitor Plaintiff's medical situation and may request additional briefing from Defendants
12 concerning any further medical diagnosis of Plaintiff's condition. The Court will also
13 consider Plaintiff's further requests to extend time to respond so that he has additional time
14 to read, research, and write. However, Plaintiff's situation does not rise to the "exceptional
15 circumstances" warranting appointment of counsel. The Court **DENIES WITHOUT**
16 **PREJUDICE** his motion to appoint counsel, (ECF No. 211).

17 **II. Motion to Extend Time to Respond**

18 In light of Plaintiff's vision issue, the Court **GRANTS** Plaintiff's request for
19 additional time to object. Plaintiff **MAY FILE** objections to the R&R on or before
20 September 17, 2018. Plaintiff also requests a copy of his motion. (MTN 3.) The Clerk of
21 Court **SHALL** include a copy of Plaintiff's motion with this Order.

22 **IT IS SO ORDERED.**

23 Dated: August 20, 2018

24 
25 Hon. Janis L. Sammartino
26 United States District Judge

27 ¹ In his Motion, Plaintiff appears to ask the Court to reconsider Magistrate Judge Burkhardt's order that
28 denied him counsel, (ECF No. 208). (MTN 3.) Because the Court has determined that Plaintiff does not
yet merit appointment of counsel, Judge Burkhardt did not err in reaching the same conclusion.